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By: Yvette L. Chriscaden Date: June 16, 2006
Yvette L. Chriscaden

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

App. No. : 10/087,032 Confirmation No.: 6498
 Inventor : Zatloukal et al.
 Filed : March 1, 2002
 Title : A WIRELESS MOBILE PHONE INCLUDING A HEADSET
 Art Unit : 2688
 Examiner : Rampuria, Sharad K.
 Customer No. : 25,943

MAIL STOP: APPEAL BRIEF-PATENTS
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

**APPELLANTS' BRIEF IN SUPPORT OF APPELLANTS' APPEAL
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Dear Sir:

This appeal furthers the Notice of Appeal filed on March 1, 2006. The appeal arises from a final decision by the Examiner in the final Office Action, dated December 6, 2005. The final decision was in response to arguments filed on September 2, 2005, in response to an earlier office action, mailed June 2, 2005.

Appellants submit this *Brief on Appeal*, including payment in the amount of \$500.00 to cover the fee for filing the *Brief on Appeal*. Appellants respectfully request

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consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

Real Party in Interest:

The Real Party in Interest is AOL, LLC of Dulles, Washington, D.C., which wholly owns Wildseed, LLC, of Seattle, WA, which is a successor to Wildseed, Ltd, of Kirkland, WA, assignee of the application. Assignment of the application from the Inventors to Wildseed, Ltd is recorded with the United States Patent and Trademark Office on November 30, 2001, at Reel 012346 Frame 0616.

Related Appeals and Interferences:

To the best of Appellants' knowledge, there are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Appellants appeal the rejection of claims 12-19. Claims 1-19 were pending, claims 1-11 were allowed, and claims 12-19 were rejected in the final Office Action dated December 6, 2005. Claims 12-19 are reproduced, as appealed, in Appendix A.

Status of Amendments:

Appellants have offered no amendments subsequent to final rejection.

Summary of the Claimed Subject Matter:

Independent claim 12 is directed towards a *wireless mobile phone headset* that comprises

“a first earpiece receiver;
a microphone; and
a connector having two plugs respectively coupled to said first earpiece receiver and said microphone to facilitate (a) removable attachment of the wireless mobile phone headset to a wireless mobile phone via two corresponding complementary interfaces of the wireless mobile phone, an input-output interface and an output interface, where telephony and non-telephony audio signals are outputted on both interfaces, and (b) transfer of telephony and non-telephony audio signals from said wireless mobile phone to said first earpiece receiver via the output interface and the plug mating with the output interface, and transfer of audio inputs from said microphone to said wireless mobile phone via the input-output interface and the plug mating with the input-output interface.”

Figure 1 illustrates one example of a mobile phone with an output interface and an input/output interface capable of receiving the connector of the headset claimed by claim 12. Figure 1 is described in detail on page 3, line 20 through page 6, line 3, in accordance with some embodiments. Figure 2b illustrates one example of the headset (complementary headset 222) with a first earpiece receiver, a microphone, and a connector having two plugs claimed by claim 12. The complementary headset 222 of Figure 2b is described in detail on page 6, line 5 through page 7, line 13 and on page 10, line 8-15, in accordance with some embodiments. Figure 5 illustrates one example of the connector having two plugs claimed by claim 12 and is described in detail on page 9, lines 5-22, in accordance with some embodiments.

Grounds For Rejection To Be Argued On Appeal:

- I. Claims 12-13 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2003/0022703 to *Reshefsky* (hereinafter "Reshefsky") in view of U.S. Patent Publication No. 2001/0050993 to *Douglas* (hereinafter "Douglas").
- II. Claims 14 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Reshefsky in view of Douglas as applied to claim 12 and further in view of U.S. Patent No. 6,594,366 to *Adams* (hereinafter "Adams").
- III. Claims 15 and 17-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Reshefsky in view of Douglas as applied to claim 12 and further in view of U.S. Patent Publication No. 2003/0104842 to *Choi et al.* (hereinafter "Choi").

Arguments:

- I. Rejections of claims 12, 13, and 19 under 35 U.S.C. §103(a) were improper because Reshefsky and Douglas, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 12, 13, and 19 is viewed as a whole.

To establish obviousness under 35 U.S.C. § 103, the Examiner must view the invention as a whole. Further, the Examiner is to perform the obviousness analysis in accordance with the standard set forth by the Supreme Court in *Graham v. John Deere Co.* That standard requires that the Examiner (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claims in issue; (3) resolve the level of ordinary skill in the art; and (4) evaluate evidence of secondary considerations. 383 U.S. 1, 17-18 (1966); see also MPEP 2141. Secondary considerations include whether the invention met with commercial success, whether the invention answered a long felt need, and whether others attempting the invention have failed. *Graham*, 383 U.S. at 17-18. Further, in applying the *Graham* framework, the Examiner must consider the invention as a whole, without the benefit of hindsight. MPEP 2141.

Claim 12 recites a wireless mobile phone headset comprising:

“a first earpiece receiver;

a microphone; and

a connector having two plugs respectively coupled to said first earpiece receiver and said microphone to facilitate (a) removable attachment of the wireless mobile phone headset to a wireless mobile phone via two corresponding complementary interfaces of the wireless mobile phone, an input-output interface and an output interface, where telephony and non-telephony audio signals are outputted on both interfaces, and (b) transfer of telephony and non-telephony audio signals from said wireless mobile phone to said first earpiece receiver via the output interface and the plug mating with the output interface, and transfer of audio inputs from said microphone to said wireless mobile phone via the input-output interface and the plug mating with the input-output interface.”

Accordingly, claim 12 teaches a headset including a novel connector that accommodates the redundant output behavior of a phone having an input-output interface and an output only interface. While making allowance for the phone to output telephony and non-telephony audio signals at the input-output interface (e.g., for compatibility reasons), the connector does not transfer the available output signals at the input-output interface and instead reserves the input-output interface for input audio signals, thereby maintaining the quality of user experience.

In contrast, the combination of Reshefsky and Douglas neither teaches nor suggests the novel connector “having two plugs respectively coupled to said first earpiece receiver and said microphone,” one plug coupled to the receiver for transferring only audio output signals from the wireless phone to the receiver via an output interface, and a second plug coupled to the microphone for transferring only audio inputs from the microphone to the wireless phone. Further, Reshefsky and Douglas do not teach or suggest an “output interface.”

At best, Reshefsky and Douglas suggest a headset including a first earpiece receiver, a microphone, and a connector having two plugs to mate with two input-output interfaces of a mobile phone. Both plugs of Reshefsky and Douglas are coupled to each of the receiver and microphone. Thus, Reshefsky and Douglas simply do not disclose two plugs respectively coupled to the receiver and microphone (by reciting "respectively," claim 12 inherently requires that one plug be coupled only to the receiver, and the other plug be coupled only to the microphone). Also, Reshefsky and Douglas simply do not suggest that only one of the plugs transfers the available audio output signals, reserving the other plug for audio input. Rather, each plug in Reshefsky and Douglas transmits any and all audio signals. Thus, no suggestion is made of reserving one plug for input and the other for output to maintain the quality of user experience, as is claimed by claim 12.

Further, by coupling only a first plug to the receiver, and only the second plug to the microphone (as is inherent in claim 12's use of "respectively coupled"), it necessarily follows that the first plug transmits only audio output (as the receiver does not include an audio input mechanism) and the second plug transmits only audio input (as the microphone does not include an audio output mechanism). Since both plugs of Reshefsky and Douglas transfer both audio input and output, it follows that they fail to suggest the novel connector for maintaining the quality of user experience by assigning inputs to one plug, and outputs to the other.

Accordingly, Applicants submit that claim 12 is patentable over Reshefsky and Douglas under 35 U.S.C. §103(a).

Claims 13 and 19 depend from claim 12, incorporating its limitations. Therefore, for at least the reasons above, claims 13 and 19 are also patentable over Reshefsky and Douglas under 35 U.S.C. §103(a).

II. Rejections of claims 14 and 16 under 35 U.S.C. §103(a) were improper because Reshefsky, Douglas, and Adams, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 14 and 16 is viewed as a whole.

As stated above, Reshefsky and Douglas fail to teach or suggest key, required recitations of the present invention, as claimed in claim 12. Adams does not cure these defects. Thus, even when combined with Adams, the cited art fails to show novel features that are noted when the invention of claim 12 is viewed as a whole.

Claims 14 and 16 depend from claim 12. Consequently, claims 14 and 16 are patentable over the combination of Reshefsky, Douglas, and Adams under 35 U.S.C. §103(a).

III. Rejections of claims 15 and 17-18 under 35 U.S.C. §103(a) were improper because Reshefsky, Douglas, and Choi, alone or in combination, fail to teach or suggest the claimed invention when the invention as claimed in claims 15 and 17-18 is viewed as a whole.

As stated above, Reshefsky and Douglas fail to teach or suggest key, required recitations of the present invention, as claimed in claim 12. Choi does not cure these defects. Thus, even when combined with Choi, the cited art fails to show novel features that are noted when the invention of claim 12 is viewed as a whole.

Claims 15 and 17-18 depend from claim 12. Consequently, claims 15 and 17-18 are patentable over the combination of Reshefsky, Douglas, and Choi under 35 U.S.C. §103(a).

Also, Reshefsky, Douglas, and Choi fail to teach or suggest that a first of the two plugs is a 4-pin plug, wherein the 4-pin plug comprises two input pins, and neither of the

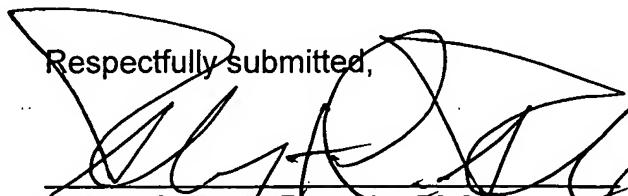
input pins is coupled to the first earpiece receiver, as is claimed in claim 18. By reserving two pins exclusively for audio input, claim 13 teaches a novel connector that maintains a high quality of user experience. In contrast, Reshefsky, Douglas, and Choi at best teach a headset including a connector with two plugs, wherein a first of the plugs is a 4-pin plug. As shown above, the plugs of the connector taught by Reshefsky, Douglas, and Choi allow both audio input and output. Accordingly, Reshefsky, Douglas, and Choi simply do not suggest reserving a portion of the pins of one of the plugs for audio input only, as is claimed by claim 18.

Conclusion

Appellants respectfully submit that all the appealed claims in this application are patentable and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

This brief is submitted with Check Number 13979 for \$950.00 to cover the filing of appeal brief and two month extension of time. We do not believe any additional fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our deposit account 500393. In addition, please charge any shortages and credit any overages to Deposit Account No. 500393.

Date: June 16, 2006

Respectfully submitted,

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Appendix A – Appealed Claims

12. (Previously Presented) A wireless mobile phone headset comprises a first earpiece receiver; a microphone; and a connector having two plugs respectively coupled to said first earpiece receiver and said microphone to facilitate (a) removable attachment of the wireless mobile phone headset to a wireless mobile phone via two corresponding complementary interfaces of the wireless mobile phone, an input-output interface and an output interface, where telephony and non-telephony audio signals are outputted on both interfaces, and (b) transfer of telephony and non-telephony audio signals from said wireless mobile phone to said first earpiece receiver via the output interface and the plug mating with the output interface, and transfer of audio inputs from said microphone to said wireless mobile phone via the input-output interface and the plug mating with the input-output interface.
13. (Original) The wireless mobile phone headset of claim 12, wherein the wireless mobile phone headset further comprises a second earpiece receiver, and said connector is further coupled to said second earpiece to facilitate transfer of at least a selected one of said telephony and non-telephony audio signals to said second earpiece receiver.
14. (Original) The wireless mobile phone headset of claim 12, wherein a first of said two plugs is an 1/8 inch audio plug.
15. (Original) The wireless mobile phone headset of claim 12, wherein a first of said two plugs is a 3-pin plug.
16. (Original) The wireless mobile phone headset of claim 12, wherein a first of said two plugs is a 2.5 mm input-output plug.

17. (Original) The wireless mobile phone headset of claim 12, wherein a first of said two plugs is a 4-pin plug.

18. (Original) The wireless mobile phone headset of claim 17, wherein said 4-pin plug comprises two input pins, and neither of said input pins are coupled to said first earpiece receiver.

19. (Original) The wireless mobile phone headset of claim 12, wherein said microphone further comprises a send/end button.

Appendix B – Copies of Evidence Submitted

No evidence has been submitted under 37 C.F.R. 1.130, 1.131, or 1.132. No evidence entered by Examiner has been relied upon by Appellants in the appeal.

Appendix C – Related Proceedings

There are no related appeals or interference proceedings currently pending, which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.